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IN THE

Supreme Court of the United States

OCTOBER TERM 1971

No. 71-784

DOROTHY TAYLOR, CHARLES ELLOIE, ISSAC REYNOLDS and CELESTINE FRANKLIN, on behalf of themselves and other similarly situated,

Plaintiffs-Petitioners,

versus

JOHN J. McKEITHEN, Governor of the State of Louisiana, C. C. "TADDY" AYCOCK, Lieutenant Governor of the State of Louisiana, JOHN S. GARRETT, Speaker of the House of Representatives, JACK P. F. GREMILLION, Attorney General of the State of Louisiana, DOUGLAS FOWLER, State Custodian of Voting Machines for Louisiana, and THE ORLEANS DEMOCRATIC EXECUTIVE COMMITTEE,

Defendants-Respondents,

VICTOR BUSSIE, JOHN C. BRIGHT, A. P. "PAT STODDARD, T. K. STIZLEIN and LOUIS BERRY CARROLL G. MILLER, WALTER M. RUTZ, PERRIN RITTINER, BENJAMIN FORBES, SR., MRS. LILLIE BRIDGES, EMMITT J. DOUGLAS, DR. D'ORSAY BRYANT, ARTHUR J. CHAPITAL, A. C. DUBRIEL, ROOSEVELT HILL, REV. HERMAN FARR and FLORENCE FLOYD,

Plaintiffs-Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioners above mentioned respectfully pray that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Fifth Circuit entered herein on September 14, 1971.

OPINIONS BELOW

The opinions of the district court and the Court of Appeals have not been reported. The opinion of the Court of Appeals is printed below at page 40 . The opinion of the district court is printed below at page .

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on September 14, 1971. On November 30, 1971, the Court of Appeals entered an order denying a petition for rehearing. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in overturning senate districts 2, 3, 4 and 5 of the district court fashioned reapportionment plan in the absence of a finding that this segment of the plan was constitutionally deficient.

2. Whether the Court of Appeals erred in modifying senate districts 2, 3, 4 and 5 to conform to a plan suggested by the four incumbent senators, which the lower court found to be racially discriminatory.

STATEMENT OF THE CASE

On June 14, 1971 the Governor of Louisiana signed into law Louisiana Acts 106 and 108 reapportioning the legislature in light of the 1970 Census. On July 16, 1971, present petitioners, who are black voters of Louisiana, filed this action challenging the 1971 Acts as racially discriminatory and violative of the one-man, one-vote mandate and requesting that the Court devise a constitutional plan. The case was consolidated with four other reapportionment suits, and proceedings were held in abeyance pending a determination of the Acts by the Attorney General of the United States under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. On August 20, 1971, the Attorney General objected to the Acts as a whole, as being racially discriminatory in purpose or effect.

The district court appointed a special master to draw a plan of reapportionment and on September 8, 1971, conducted a hearing. On September 10, 1971, the district court entered an opinion (Appendix "B") finding the 1971 Acts to be invalid by virtue of the Section 5 objection and establishing new districts as proposed by the special master. The Court of Appeals, by order of September 14, 1971, upheld the district court in large parts, but modified senate districts 2, 3, 4 and 5 at the request of the incumbent senators of that area (acting as special counsel for the State). Petitioners seek review of this modification, ordered by paragraph 3(a) of the September 14, 1971 judgment of the Court of Appeals.

The findings of the district court in regarding these four districts include:

1. That the most recent expressions of the Louisiana Legislature on reapportionment, Acts 106 and 108 of 1971, were found by the Attorney General of the United States to be racially discriminatory in purpose and effect and objected to as a whole (opinion of the District Court p.16).

2. That the historical policy of the State of Louisiana (extending through Acts 106 and 108 of 1971), has been to deny black citizens access to the political process by drawing electorial districts which minimize their voting strength and that "it was this policy and these 'historical' boundaries that produced but two Negro Legislators since Reconstruction days ... and even they did not sit at the same time ... one succeeded the other." (opinion of the District Court, p. 24; also see, p. 32).

3. "The Plan proposed by the Senators /approved by the Fifth Circuit/ would help perpetuate this 'historical fact' and this State 'policy' while the /District/ Court approved plan would tend to correct this injustice." (opinion of the District Court p. 24).

4. The Senators plan for Districts 2, 3, 4 and 5 (approved by the Fifth Circuit) jumps ward boundaries and crosses natural geographic boundaries to divide a heavily black concentration of population and create two majority white districts (opinion of the District Court p. 26, p. 23).

5. The lower 9th ward is a "heavily Negro" area (opinion of the District Court, p.26).

bounded generally on the West by the 8th ward, on the South by the Mississippi River, on the East by St. Bernard Parish and on the North by "the Mississippi Gulf outlet and a predominantly undeveloped area" (opinion of the District Court p.26). The district court found that the senators' proposed modification split this heavily Negro community (which lies entirely within the 9th ward) into different Senatorial Districts, each now with a white majority, and departed from natural and political boundaries to do it. Approximately one-half of this heavily Negro Community (precincts 9 through 29 of Ward 9) is joined with the heavily white 8th ward, while the remainder is joined with heavily white "New Orleans East" which lies across two natural boundaries. The district court was quite clear in this finding:

> It is also interesting to further compare the Senatorial District 2 proposed by the Senators with the District 2 proposed by the Court approved plan. In the Senators' plan we find a portion of the lower 9th ward, which is heavily Negro, combined with New Orleans East, which is heavily white, with the two areas separated by the Mississippi Gulf outlet and a predominantly under-developed area. In contrast is the Court approved District 2, which combines the lower 9th ward with a similarly inhabited area to the West which results in a compact area in which the Negro population has not been fragmented, and throughout which there is apt to be more of community interest.
>
> (opinion of the District Court p. 26)

6. There is a rational basis for the district court's plan for Senate Districts 2, 3, 4 and 5 (opinion of the district court p. 26).

7. The special master did not employ reverse-gerrymandering to create "black districts" or to maximize black voting strength: "the submissions of plaintiff Taylor tend to show that this special master did not draw a plan primarily to favor the Negro population" (opinion of the district court p. 28).

The full text of the Ruling of the Fifth Circuit on these Senatorial Districts is as follows:

> 3. We affirm the judgment of the district court with the following modifications:
>
> (a) the boundaries of the Senate Districts 2, 3, 4 and 5 are modified so as to conform with the Defendants-Appellants' alternate plan for those districts.

No reasons were given for this modification of the district court order.

REASONS FOR GRANTING WRIT

A. The Plan Of The District Court For Senate Districts 2, 3, 4 And 5 Was Without Constitutional Defect.

Senate districts 2, 3, 4 and 5 in the plan of the district court are compact districts which in all cases do not divide precincts. Wards 1, 2 and 6 of Orleans Parish are kept in tact, and wards 4, 5, 7, 8 and 9 are divided among two or more districts. The boundary between Senate District 4 and 5 is is undeniably a jagged line.

Evidence by plaintiffs-petitioners at the hearing demonstrated that the result of this configuration was two districts with a black population and voting registration majority (Districts 2 and 4) and two districts with a white population and voter registration majority (Districts 1 and 3). A further result was that two of the incumbent senators resided in District 1 and the other two resided in District 3, spelling certain defeat for two of them.

The Court of Appeals overturned Districts 2, 3, 4 and 5 of the district court's plan without stated reasons. The substitute plan offered by the incumbent senators acting as special counsel, does not have the special standing afforded to legislative enactments. The Senators' substitute plan was merely an effort by incumbents to protect their legislature seats by proposing districts to the Court which would place each of them in a separate district with a safe white majority. The Senators like any party had the burden of demonstrating the constitutional inadequacy of the Court drawn plan. This they failed to do.

The result of the district court plan was two senatorial districts with a black majority. The burden upon the incumbent senators to prove that the court drawn Senate Districts 2, 3, 4 and 5 was a purposeful device to guarantee black representation is at least as strong as the burden upon black plaintiffs under Whitcomb v. Chavis, 403 U.S. 124 (1971) to demonstrate that a particular legislative enactment is a purposeful device to further racial discrimination.

The Senators relied heavily on the jagged boundary line between Senate Districts 4 and 5 as evidence of such a purpose. The district court found, however, that the line was jagged to conform to precinct boundaries in the area. Making this line perfectly straight would not have altered the racial composition of the districts, but by dividing precincts it would have made it impossible to conduct the First Primary Elections on November 6, 1971. The Senators had the burden of showing at a minimum that the jagged line had the purpose or effect of including or excluding certain racial groups. This they could not and did not do.

B. The Modification Of Senate District 2, 3, 4 And 5 By The Court of Appeals Violates The Fifteenth Amendment.

The district court found that the Senators proposed modification for Senate Districts 2, 3, 4 and 5 were racially discriminatory in purpose and effect. Specifically the district court found that by splitting up the heavy black population concentration of the lower 9th ward and by jumping natural and ward boundaries to do it, the Senators' plan effectively blocked access to the political process for black citizens. The Court of Appeals reversed this finding without stated reasons. The most recent attempt to reapportion by the Louisiana Legislature, Acts 106 and 108 of 1971, had just been rejected as racially discriminatory by the Attorney General acting pursuant to Section 5 of the Voting Rights Act of 1965. The district court was under a clear mandate to devise a plan of reapportionment which not only complied with the one-man, one-vote mandate but also avoided the racial discrimination of the past. In this context the district court carefully examined the plan of the Senators and found that it did not avoid racial discrimination, but, by dividing the large black community of the lower 9th ward, furthered the racial discrimination of the past.

The district court, having discovered the racially discriminatory features of the Senators' plan, was bound by the decisions of this Court to disallow its implementation. This Court has long held, that the "/Fifteenth/ Amendment nullifies sophisticated as well as simple minded modes of discrimination," Lane v. Wilson, 307 U.S. 268, 275 (1939) and that impairment of voting rights of black citizens cannot be justified by being "cloaked in the garb of realignment of political subdivisions." Gomillion v. Lightfoot, 364 U.S. 339, 345 (1960).

In examining the validity of proposed reapportionment plans the question of deprivation of the right to vote on account of race is a necessary one. Where it is shown under the circumstances of a particular case that an electoral device is racially discriminatory in purpose or effect, that device impermissible. Fortson v. Dorsey, 379 U.S. (1965) 433; Burns v. Richardson, 384 U.S. 73 (1966); Whitcomb v. Chavis, 403 U.S. 124 (1971).

The uncontested history of Louisiana's continuing efforts to bar black citizens from participation in the political process (which extends to the enactment of the 1971 reapportionment acts) suggests that the district court properly scrutinized the Senators' districting proposals to uncover subtle as well as simple minded techniques for barring access of blacks to the political process.

The district court found that by splitting up the heavy black population concentration of the lower 9th ward, the plan effectively blocked access to the electoral process for black citizens. These districts were designed to continue the policy of Acts 106 and 108 of 1971, a policy of dilution of the voting strength of black citizens of Louisiana.

Senatorial Districts 2, 3, 4 and 5 as approved by the Court of Appeals, fall squarely within the prohibitions of decisions such as Gomillion v. Lightfoot, 364 U.S. 339 (1960); Sims v. Baggett, 247 F. Supp. 96 (M.D. Ala., 1965); and Smith v. Paris, 257 F. Supp. 901 (M.D. Ala., 1966) aff'd., 386 F. 2d 979 (C.A. 5, 1967). They are not like Marion County's districts, which were conceded not to be purposeful devices to further racial discrimination. Whitcomb v. Chavis 403 U.S. 124, 149 (1971). When no black senator is elected to the Louisiana Legislature, it will not be because the votes of blacks were merely "canceled out by defeat at the polls," but because the senatorial districts were designed to prevent a black majority in any one district.

There was "no evidence" in Whitcomb v. Chavis, that "a segment of the population is being denied access to the political process," 403 U.S. at p. 155. In Louisiana, there is uncontestable evidence that the State seeks to deny blacks access to the political process. It was this determination which makes Louisiana subject to Section 5 of the Voting Rights Act of 1965; it was this determination which invalidated Acts 106 and 108 of 1971; and it was this determination which led the district court to reject the modification proposed for Senate Districts 2, 3,4 and 5.

If the Court of Appeals found a constitutional defect in Senate Districts 2, 3, 4 and 5 of the district court's plan, the proper remedy would have been to return that segment of the plan to the district court with criteria for avoiding racial discrimination. The proper remedy was hardly to substitute a plan which perpetuated purposeful discrimination against black voters.

RELIEF

Because the district court plan for Senate Districts 2, 3, 4 and 5 is interchangeable with the modification of those districts ordered by the Court of Appeals, a reversal of paragraph 3(a) of the September 14, 1971 order of the Court of Appeals would not necessitate the redrawing of any other districts. Should both of the plans for Senate Districts 2, 3, 4 and 5 be found objectionable, the district court could be directed to redraw the districts according to specified criteria, and to order new elections for these four senate seats.

CONCLUSION

Federal Courts in the South are increasingly called on to devise plans of reapportionment which avoid the racial discrimination of the past. This case is the first in which a Federal Court has explicitly dealt with this problem. The district court set out careful and detailed guidelines for devising a racially fair plan of apportionment and applied these guidelines to the various redistricting proposals. The Court of Appeals rejected a significant portion of the district court's plan without comment. In

this case, prompt adjudication is necessary not only to protect valuable voting rights but to remove the confusion caused by the Court of Appeals' unexplained modification. Petitioners therefore pray that the Petition for Certiorari be granted.

Respectfully submitted,

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December, 1971

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing brief have been served upon opposing counsel by mail on the 10th day of December, 1971.

____

U. S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FILED SEP 10 1971
BENJAMIN W. REISCH
CLERK

APPENDIX A

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

VICTOR BUSSIE, ET AL
VERSUS
THE GOVERNOR OF LOUISIANA, ET AL

CIVIL ACTION
NUMBER 71-202

EMMITT J. DOUGLAS, ET AL
VERSUS
JOHN J. McKEITHEN, Individually
and as Governor of Louisiana, et al

CIVIL ACTION
NUMBER 71-206

DOROTHY TAYLOR, ET AL
VERSUS
JOHN J. McKEITHEN, Governor
of Louisiana, et al

CIVIL ACTION
NUMBER 71-234

CARROLL G. MILLER, ET AL
VERSUS
GOVERNOR OF LOUISIANA, ET AL

CIVIL ACTION
NUMBER 71-235

VICTOR BUSSIE, ET ALS
VERSUS
THE GOVERNOR OF LOUISIANA, ET ALS

CIVIL ACTION
NUMBER 71-259

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ORDER
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DOCUMENT NO.

WEST, Chief Judge:

BACKGROUND

In 1966 a suit was filed in this Court involving "the right of Louisiana citizens not to be shortchanged in their vote for members of the state legislature." See Bannister v. Davis, 263 F.Supp. 202 (1966). As a result of that suit, which was heard by a statutory three judge court, a special session of the Louisiana Legislature was convened and Acts 3 and 4 of the Extra Ordinary Session of 1966 were enacted. Act 3 reapportioned the Louisiana Senate and Act 4 reapportioned the Louisiana House of Representatives. Immediately thereafter the Court entered an order approving the plans for reapportionment contained in Acts 3 and 4 of 1966. The plans for both the House and the Senate contained a mixture of multimember and single member districts. The Louisiana Legislature has been apportioned according to those Acts up to the present time. Following the 1970 United States census, the Louisiana Legislature, in accordance with the mandate of the Louisiana Constitution, undertook to reapportion itself in accordance with the 1970 census. A Legislative Committee on Re-Apportionment was appointed and worked diligently in an effort to produce a plan which would be in accordance with the 1970 census while at the time time complying with the one man, one vote requirement and the other equal protection requirements of the Fourteenth and Fifteenth Amendments to the United States Constitution. All efforts of the Committee to have a special session called to consider its plans were to no avail and it was not until the Regular 1971 Session of the Legislature that the question of reapportionment was considered. There was much opposition to the Committee's plans, eminating largely from the Orleans and Jefferson Parish legislators, and it was only after many amendments had been made to the Committee's proposed plan that Acts 106 and 108 of the 1971 Regular Session emerged. The resulting plans were so obviously constitutionally defective that these present consolidated suits were instituted seeking to have Acts 3 and 4 of the Extra Session of 1966 and Acts 106 and 108 of the Regular Session of 1971 declared unconstitutional, null and void, and seeking further to have this Court "fashion a plan" of reapportionment that would be protective of the constitutionally guaranteed rights of the citizens of Louisiana. Since the proposed changes in apportionment contained in Acts 106 and 108 were creatures of the Legislature and not the Court, this Court stayed all proceedings pending submission of the plan to the Attorney General of the United States as required by Sec. 5 of the Voting Rights Act of 1965, 42 U.S.C.A. §1973(c), for a determination as to whether or not the plan was racially discriminatory. This was done, and the Attorney General concluded that the plan was, in many respects, racially discriminatory. This Court whole-heartedly concurred with the findings of the Attorney General. The rejection of the plan by the United States Attorney General automatically rendered Acts 106 and 108 null and void. See Sec. 5 of the Voting Rights

Act of 1965, 42 U.S.C.A. §1973(c). Even if the Attorney General had not found racial discrimination, this Court would have found those Acts unconstitutional for failure to comply with the constitutional requirement of one man, one vote; for employing gerrymandering in its grossest form; for diluting the vote of certain ethnic groups, and for other reasons.

Recognizing the need for expert assistance in this troublesome and complex problem of reapportionment, this Court then appointed Mr. Edward J. Steimel, Executive Director of the Public Affairs Research Council (PAR), as Special Master pursuant to the provisions of Rule 53 of the Federal Rules of Civil Procedure and directed him "to hold hearings, if he deems it advisable, or to receive proposed reapportionment plans from the parties involved in these suits, and to evaluate those plans and to prepare and present to this Court a total, complete plan of reapportionment of the House of Representatives and the Senate of the State of Louisiana which will most nearly comply with the one man, one vote mandate of the United States Supreme Court." Mr. Steimel neither holds nor seeks public office and his expertise in the field of reapportionment is well recognized. The three judge court in Bannister recognized his qualifications in this area when they noted that:

> "[I]n view of the fact that the Public Affairs Research Council has prepared a reapportionment plan for Louisiana that appears, generally speaking, to be fair and rational, the defendants would carry a heavy burden if they should assert that it is impossible to reapportion lawfully unless the size of the legislative body is increased." 263 F.Supp. 202, 208.

Pursuant to this order, the Special Master held four (4) days of hearings during which over 100 persons were heard, including approximately 80 legislators. All proposed plans offered were accepted and evaluated by the Special Master. No one was denied a hearing and no one was denied the opportunity to present suggested plans. After four days of hearings, the Special Master prepared and presented to the Court his findings and conclusions in the form of a "Reapportionment Plan for the Louisiana Legislature", together with maps and supporting exhibits, all of which are filed of record in this case as Exhibits "A" through "W". Thereafter, after a thorough review and evaluation of the Special Master's report, this Court concluded that there was no manifest error therein, and that the proposed plan did, in fact, comply with all of the requirements of law, and that the plaintiffs were, as a matter of law, entitled to the relief which they sought, and that therefore the Plan for Reapportionment presented by the Special Master should be adopted and imposed by the Court upon the Louisiana Legislature Accordingly, an order to that effect was entered on August 24, 1971, along with written reasons therefor.

In the prayer of plaintiffs' complaint, it was requested that:

> "In a form and manner to be determined by the Court, a plan of reapportionment of the Louisiana Legislature be fashioned and put into effect so as to guarantee to petitioners in the forthcoming elections their rights and privileges as citizens of the United States, to equal protection of the laws secured them by the Constitution and laws of the United States and their civil rights, secured by law."

This, in the opinion of the Court, is precisely what the Order of August 24, 1971, did. Plaintiffs, in whose favor judgment had been rendered, filed a "Motion for New Trial" on August 26, 1971, which motion, for written reasons assigned, was denied on August 27, 1971. Plaintiffs in one suit and defendants in all suits then perfected an appeal to the Fifth Circuit Court of Appeals who, in turn, on September 4, 1971, ordered this Court "to conduct an expedited hearing in open court in compliance with Rule 53(e)(2)." This Order was not received by this Court until September 7, 1971, on which date telegraphic notice was sent to all counsel of record notifying them of a hearing to be held on September 8, 1971 at 10:00 o'clock a.m. All counsel were present for that hearing and at the commencement of the hearing plaintiffs belatedly filed the objections required by Rule 53(e)(2), which were accepted and filed of record. It is the testimony adduced at this hearing of September 8, 1971, that is now before the Court. The question presented is whether or not the report of the Special Master should be accepted by the Court as is, or whether it should be altered and accepted, or whether it should be rejected completely.

THE EVIDENTIARY HEARING OF SEPTEMBER 8, 1971

As set forth in the preceding background analysis, this hearing was held pursuant to the mandate of the Court of Appeals dated September 4, 1971. Counsel for all parties to these suits were present and participated. Others who, at the last moment, attempted to intervene as parties or to be enrolled as additional counsel of record were denied that privilege on the ground that since the hearing was already underway, these motions simply came too late, but all were permitted to appear as amicus curiae and to file any and all proposed plans for reapportionment that they wished to file. No one was denied this privilege. A full evidentiary hearing was held with no time limits placed on anyone. At the close of the testimony the Court noted that no one had called the Special Master as a witness to question him about the plan which he had presented to the Court. Whereupon the Court announced to all counsel that Mr. Steimel was present in Court and was available to be questioned by anyone who wished to do so. It is quite significant that no one availed himself of this invitation to question Mr. Steimel as to the merits or demerits of the very plan that was supposedly under attack.

Now, as to the specific objections raised to the plan which this Court previously approved and adopted as one complying in every way with announced constitutional standards, it is at once apparent that the major objections come from incumbent state senators from Orleans Parish. It was primarily the objections from this same area that prevented the Legislature at its last regular session from coming up with a plan of its own that could withstand constitutional scrutiny. The main objection to the court approved plan centers around the newly created senatorial districts numbered two (2) through five (5) in Orleans Parish. However, it must be noted that no witnesses, other than the incumbent senators from this area, were presented in opposition to the new districts. It bears noting also that under the court approved plan, two incumbent senators find themselves having to run against each other in Senate District 5, and two incumbent senators find themselves having to run against each other in Senate District 3, while under the plan they propose, each will have a district of his own. These are the only four witnesses who appeared to urge a change in the proposed Senatorial Districts 2 through 5, and they were apparently not concerned with any other areas of the State because they confined their objections to this area. As a matter of fact, one of the Senators reportedly refused to present objections to the East Baton Rouge redistricting even though that Parish had no counsel of record to represent it. The proposed plan for East Baton Rouge was, however, received by the Court as an amicus curiae offering and thoroughly considered as will hereinafter appear. It is, of course, incumbent upon the Court to keep in mind that those elected to office for specific terms do not thereby acquire a vested interest in the office. Furthermore, we must not lose sight of the fact that members of the Legislature represent people and not parishes, wards, or precincts. It is the people who have the constitutional right at all times to be equally and fairly represented. The office holder has no constitutional right to represent anyone except for the specific term for which he is elected. Therefore, any plan of apportionment, to be constitutionally acceptable, must pass certain basic tests. It must, within reason, conform to the one man, one vote rule. It must not be so designed as to dilute the voting strength of any person or group. And it must not employ the devise of gerrymandering in order to favor any person or group. When possible, the plan should follow parish and ward lines as well as historical and natural boundaries. But the use of such boundaries cannot be tolerated if either the purpose or the result is to deprive the people of the benefit of the one man, one vote principle or to deprive them of the anti-dilution principle now firmly established in the law. With these principles in mind, let's turn to an analysis of the stated objections to the court approved plan.

The main thrust of the argument of the Senators from New Orleans is that there is no rational basis for the boundaries of Senatorial Districts 2, 3, 4, and 5 as proposed in the court approved plan because they violate parish and ward lines. Exhibit No. 1 and Exhibit No. 2 show Districts 2 through 5 as proposed by Senators Duplantier, O'Keefe, Hickey and Kiefer, the four Senators from this area. Their Exhibits No. 3 and 4 show the same districts as they appear in the court approved plan. While it is true that the proposed changes suggested by the Senators, none of whom, incidentally, are either plaintiffs or defendants in any of these consolidated suits, but are merely counsel of record, would result in districts contained within established ward lines whereas the court approved plan cuts across ward lines in some instances, nevertheless a closer analysis of the two proposals is required. While as a general proposition, the one man, one vote criteria concerns itself primarily with total population in the district, it is nevertheless necessary to look also at the voter registration figures in the district in order to make a determination as to whether or not the proposal meets the anti-dilution criteria. An analysis of the total population in each of the districts under consideration shows that under the court approved plan, Senate District 2 would have a negro population of 64 per cent; District 3, 16 per cent; District 4, 70.2 per cent, and District 5, 21.7 per cent, while under the plan proposed by the Senators, District 2 would have a negro population of 42.6 per cent; District 3, 43.7 per cent; District 4, 54.4 per cent, and District 5, 42.0 per cent. Thus, under the court approved plan, two of the four districts would have a majority negro population whereas under the Senators' plan, only one district w ould have a majority negro population. But even more significant is the fact that under the court approved plan, Senate District 2 would have a negro voter registration of 51 per cent; District 3, 18 per cent; District 4, 58 per cent, and District 5, 20 per cent while under the plan proposed by the Senators, District 2 would have a negro voter registration of only 37.6 per cent; District 3, 25.7 per cent District 4, 44.3 per cent; and District 5, 24 per cent. Thus, under the court approved plan, two of the four districts would have a majority of registered voters of the negro race, with the attendant possibility of electing negroes to the Legislature, while under the Senators' plan, none of the four districts would have a majority of registered negro voters. Thus, while the Senators' plan probably would meet the one man, one vote standard, even though the deviations would be slightly higher than under the court approved plan, it would, in the opinion of this Court, operate to diversify the negro voting population throughout the four districts and thus significantly dilute their vote. Their plan practically eliminates the possibility of a negro being elected from any of the four districts, while the court approved plan at least gives them a fair chance in two out of the four districts. The Senators made much of the need to adhere to "historical" boundaries, which, they assert, are the ward lines in this area. They contend that any deviation therefrom is irrational and contrary to State policy. But, as brought out in the evidence, it was this policy and these "historical" boundaries that produced but two negro legislators since Reconstruction days. During the Twentieth Century only two negroes have sat in the Louisiana Legislature, and even they did not sit at the same time. One succeeded the other. The plan proposed by the Senators would help perpetuate this "historical fact" and this State "policy" while the court approved plan would tend to correct this injustice. Neither historical boundaries nor state policy nor state constitutional provisions may be used as vehicles by which to deprive the people of their constitutional right to equal protection under the law or of their right to equal participation in the election process. The court approved plan protects these rights. The Senators' plan does not. The court approved plan seeks to protect the rights of the people while the primary purpose of the Senators' plan appears to be the protection of incumbent office holders. The Senators complain about the creation of single member districts. As of the present time, 31 states have found the single member district to be the preferable method of apportionment. In Bannister, this Court recognized the advantages of single member districts and recommended their use. See 263 F.Supp. at p. 209. Single member districts are always to be preferred if the use of multi-member districts tends to dilute the voting strength of any minority group. That such is the case in Louisiana could hardly be denied. By the uniform use of single member districts, and by deviating to some extent from "historical" boundaries, equal participation in the election process is made available to all citizens. The court approved plan, in the opinion of this Court, does that. The plan proposed by the Senators does not. We must give more than lip service to the right to participate in the election process, no matter whose official status might be put in jeopardy thereby. The court approved plan gives meaning to the "equal protection of the laws" guaranteed by the United States Constitution. The Senators' plan does not. The Senators argue that there is no "rational basis" for the court approved plan. In view of the foregoing, it is understandable why they did not avail themselves of the opportunity to question Mr. Steimel as to the rationale behind the court approved plan. It is also interesting to further compare the Senatorial District 2 proposed by the Senators with the District 2 proposed by the court approved plan. In the Senators' plan we find a portion of the Lower 9th Ward, which is heavily negro, combined with New Orleans East, which is heavily white, with the two areas separated by the Mississippi Gulf Outlet and a predominantly undeveloped area. In contrast is the court approved District 2, which combines the Lower 9th Ward with a similarly inhabited area to the west which results in a compact area in which the negro population has not been fragmented, and throughout which there is apt to be more of a community interest.

While at first blush one might question the many sided perimeter of Senatorial District 4, a closer scrutiny will reveal that this was done in order to follow precinct lines while at the same time keeping Ward 6 intact.

Primarily for these reasons, and for the further reason that there has been no showing of manifest error in the findings of fact of the Special Master, the changes proposed by the New Orleans Senators, as depicted in their Exhibits 1 and 2, to the court approved plan will be rejected.

The next major area of dispute concerns Jefferson Parish. Mr. Francis Laurialle, a member of the House of Representatives from Jefferson Parish, testified as to what he considered to be inequities in the court approved plan. He contends that Jefferson Parish should not have to share four of its allotted representatives with other parishes. According to the 1970 census figures, Jefferson Parish should be entitled to 9 2/3 seats in the House of Representatives. Under the court approved plan, that Parish is given nine seats to be filled entirely by voters within the Parish, and they participate along with other parishes in the election of four other representatives. In one of these districts Jefferson has a majority of the voting strength and thus, in effect, they may elect ten representatives and play a minor role in the election of three others. They object to the plan placing Ward 2 in House District 54 with the southern part of LaFourche Parish; Ward 6 in District 105 with Plaquemines Parish and the rural part of St. Bernard Parish; part of Ward 7 in District 88 with part of Orleans Parish, and Wards 1 and 2 with a contiguous part of Ward 15 of Orleans Parish. In so arranging these parts of Jefferson Parish, the Special Master gave special consideration to population requirements, community of interests, accessibility of areas joined, and the resulting disruption of other districts if alternatives were resorted to. Representatives of Jefferson Parish presented no alternative plan to either the Special Master or to the Court and freely admitted that they had none. Jefferson Parish has its full share of representation under the court approved plan, and no manifest error has been shown in the plan submitted by the Special Master insofar as Jefferson Parish is concerned. Since no suggested alternative was presented, there is nothing before the Court other than the court approved plan which the Court finds constitutionally acceptable."

The plaintiff Taylor, while approving and recommending acceptance of the court approved plan, did also file Exhibits G (1) and G (2). These exhibits merely show that plans could be presented which are within acceptable deviation limits while at the same time giving the negro voters an even greater voter strength than does the court approved plan. These submissions merely tend to show that the Special Master did not draw a plan primarily to favor the negro population. These plaintiffs approve the court approved plan and hence no further comment is necessary as to them.

The same may be said of Exhibit H(i) filed by the Republican Party of Louisiana. They have no specific objection to the court approved plan but merely file Exhibit H(i) as evidence that other acceptable plans could also be presented. Attorney Murphy Bell, on behalf of the plaintiff Emmitt Douglas, State President of the NAACP, filed a "Motion to Submit Alternative Plan for East Baton Rouge Parish Senate Redistricting" wherein he proposed certain changes in Senate Districts 15 and 16. There was no evidence introduced in support of this motion nor was there any argument made in support thereof. A study of the proposal indicates that it in no way improves on the court approved plan and since this plaintiff specifically indicated his approval of the court approved plan, no further consideration was given to this proposal.

Four exhibits were filed by the State, identified as State 1, 2, 3, and 4. No evidence or argument was presented in support of any of these exhibits. Exhibit State 1 simply proposes a change in the St. Tammany-Washington Parish area that would place Ward 7 of St. Tammany Parish in House District 74 and Ward 10 of St. Tammany Parish in House District 75. The obvious result of this proposed change would be to place two incumbent representatives in different House Districts rather than placing them in the same district as the court approved plan does. To accept this proposal would be gerrymandering in its most obvious form. The proposal is therefore rejected.

State Exhibit 2 concerns itself with Bossier Parish. It simply recommends some options that had previously been submitted to the Court in the Special Master's report and rejected. The principal objection raised is the placing of Bossier City in the same district with Shreveport wherein Bossier will be a "minority partner." No alternative to this set-up has been presented either orally or in writing. The Legislature, in its 1971 plan, handled this problem by devising a district composed of non-contiguous areas. This was even objected to by the United States Attorney General when he rejected Acts 106 and 108 of 1971. No evidence or oral argument was presented in support of State Exhibit 2 and it is once again rejected.

State Exhibit 3 concerns House Districts 19 and 20 -- Richland, Madison, Franklin and Tensas Parishes. Neither the purpose of nor the reason for the suggested changes were presented to the Court either orally or in writing, and thus the proposal, if it was intended to be such, contained in State Exhibit 3, is rejected.

State Exhibit 4 is simply a "Brief of Amicus Curiae" and needs no comment.

The plaintiff Victor Bussie, who obviously appears in these suits for the purpose of protecting the interest of organized labor, just as others appeared to protect their seat in the Legislature or to protect the interests of other special interest groups, filed, through his attorney, Camille F. Gravel, Esq., Exhibits marked Bussie Exhibit 1 and Bussie Exhibit 2. Exhibit 1 is but a report of the Joint Legislative Reapportionment Committee which sets forth Proposed Plans A, B, and C, which were prepared by the Legislative Committee. These proposed plans have deviations as high as 12.34 per cent, and merely point up the fact that the Legislature was unable to apportion itself according to law. Bussie Exhibit 2 is merely a report of the Louisiana Legislative Council discussing the impact of Federal Court decisions on the question of reapportionment. Neither exhibit adds much if anything to this record. The fact is, though, that the Legislature did attempt to reapportion itself by passings Acts 106 and 108 of the 1971 Regular Session.

The plaintiff Bussie did not like the job the Legislature did, and he filed one of these suits complaining that the Legislative Acts were racially discriminatory, that they did not adhere to the one man, one vote rule, that the Plan of the Legislature was bad because it used varied and inconsistent approaches to the establishment of the new districts, i.e., it used both single member and multi-member districts, and that "pure politics" appeared to be the basis for the Legislature's Plan because it was created for the benefit of incumbents rather than for the benefit of the people. These are, of course, very laudable complaints. But when this Court adopted a plan that completely eliminated all of the undesirable things complained of by this plaintiff, the Court is asked by the same plaintiff to do what, in this Court's opinion, would be simply substituting one brand of politics for another. This, the Court refuses to do. Let's look for a moment at this plaintiff's complaints as set forth in the closing argument of his attorney, Mr. Gravel. Bear in mind that neither this plaintiff nor his counsel submitted a proposed plan to be substituted for the court approved plan. They merely complain generally, without offering solutions. Mr. Gravel argued that the court approved plan violated the Louisiana constitutional concept of apportionment based upon historical ward lines. He says that because precinct lines are subject to change, they should not be used as voting district boundaries.

But there is nothing sacred about State constitutional concepts of voting districts if those concepts produce districts that do not conform to the standards of the United States Constitution. The Supremacy Clause of the United States Constitution must prevail in such a situation. As we have seen, the so-called "historical" concepts referred to have permitted certain power bases to be maintained in the Louisiana Legislature; they have denied the citizenry of the State of Louisiana the benefits of the one man, one vote rule; they have, in the words of the plaintiff himself, allowed "pure politics" in many instances to reign supreme at the expense of the constitutional rights of the citizens of Louisiana; (witness the failure of the Louisiana Legislature to reapportion after each United States Census); and these "historical" concepts have successfully limited the number of negroes who could sit in the Louisiana Legislature to two in 75 years, despite the fact that according to the latest census figures, negroes make up 29.9 per cent of the total population and 21 per cent of the registered voters of the State of Louisiana. Simply stated, "historical" concepts must give way to constitutional rights even though those concepts happen to be embodied in the State Constitution. A state constitutional provision that prevents the exercise of federally guaranteed rights is simply unconstitutional. See Bannister v. Davis, 263 F. Supp. 202, 208 (D.C. La. - 1966). There is no merit to plaintiff's contention that simply because "historical" ward lines have been crossed in the court approved plan, the plan itself should be unacceptable. Ward lines have indeed been crossed, and for the very good and valid purpose of eliminating the inequities complained of by Mr. Bussie in his complaint.

Mr. Gravel next says that the plan should conform to the "rational plan" set forth in the Louisiana Constitution, while still conforming to the one man, one vote rule. Our prior comments concerning "historical" concepts applies equally to this contention.

The next complaint is that the Court should have had the "parties to the litigation" fashion a plan instead of appointing a Special Master to do it. First of all, the appointment of the Special Master is specifically authorized by Rule 53 of the Federal Rules of Civil Procedure. Secondly, the very parties who appear to be the primary parties at interest in these suits, i.e., the Senators from New Orleans and Mr. Victor Bussie, all had an active part in the abortive attempt of the Legislature to reapportion itself in 1971. For this Court to have assumed for one moment that these parties could suddenly get together and come up with an acceptable plan after what was, with their assistance, presented to the people by the Louisiana Legislature, would have been presumptuous indeed. Neither this plaintiff nor his attorney ever suggested such a possibility until the final arguments were being heard in this case. Instead, in their suit they prayed that:

> "In a form and manner to be determined by the Court, a plan of reapportionment of the Louisiana Legislature be fashioned and put into effect so as to guarantee to petitioners in the forthcoming elections their rights and privileges as citizens of the United States, to equal protection of the laws secured them by the Constitution and laws of the United States and their civil rights, secured by law."

The Court did as these plaintiffs requested. In a form and manner determined by the Court, a plan of reapportionment was adopted which did secure to petitioners their constitutionally guaranteed rights. There is no merit to this complaint about who drafted the court approved plan.

Mr. Gravel's statement in argument that there are others more knowledgeable in the field of reapportionment deserves no comment. Suffice it to say that PAR has assisted in the apportionment of many public bodies throughout the State of Louisiana, and the Court was and is completely satisfied that Mr. Steimel is eminently qualified to perform as Special Master in this case.

Lastly, Mr. Gravel argues that there was "no reason to use single member districts" and that he "thinks it is unconstitutional." The simple answer to this is that single member districts have been approved and advocated by courts from the Supreme Court on down and 31 States have used single member districts as a means of reapportioning their legislatures. There is simply less dilution of voting strength of minority groups when single member districts are used, and, in the opinion of this Court, they are the real answer to the true one man, one vote concept enunciated by the Supreme Court in Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed. 2d 506 (1964).

There is no legal basis for the objections raised by the plaintiff Victor Bussie. He offers no substitute plan. The prayer of his complaint has been answered in full. His objections to the court approved plan are without merit and are rejected.

This brings us to the last objection under consideration. Senator J. D. DeBlieux, of Baton Rouge, Louisiana, who is not a party to these suits, filed an amicus curiae brief and proposed plan for Senatorial Districts in East Baton Rouge Parish. Senator DeBlieux finds himself in the same new district with the other two Senators from East Baton Rouge Parish, and his proposed plan would extricate him from that predicament while leaving the other two Senators to run against each other. In all fairness to the DeBlieux plan, it must be said that it is equally as good as the East Baton Rouge Parish Plan contained in the court approved plan, but not necessarily any better. Deviations are slightly lower, and neither plan tends in any way to dilute the voting strength of minority groups. The DeBlieux plan does not divide Ward 3 whereas the court approved plan does. Both plans result in equally compact districts. Had the DeBlieux plan been timely presented to the Special Master, it might well have been incorporated in the plan submitted by the Special Master to the Court. But it was not.

The test is whether or not the plan presented to the Court meets constitutional requirements. The Special Master found facts and prepared a plan. His findings of fact simply cannot be disturbed unless found by the Court to be manifestly erroneous. There is no such finding here. One plan is equally as good as the other. The fact that one ward line is kept intact under the DeBlieux plan is not significant enough in this case to find manifest error in the plan of the Special Master. There is, in fact, another ward line broken in the DeBlieux plan that is not broken in the court approved plan. Thus, the Court finding no manifest error in the Senatorial District Plan for East Baton Rouge Parish as proposed by the Special Master, the substituted plan proposed by Senator DeBlieux is rejected.

SUMMARY AND CONCLUSIONS

The actual objections raised during this hearing to the court approved Plan of Reapportionment for the Louisiana Legislature may be summarized as follows:

1. The plan fails to adhere to historical ward lines in forming some of the proposed new districts --- particularly in Orleans Parish.

2. The plan uses single member districts exclusively whereas objectors prefer the use of multi-member districts.

3. Jefferson Parish is "short changed" on representation in the House of Representatives and is improperly divided in such a manner as to place certain wards of the Parish with wards of adjoining parishes to create districts.

4. A Special Master should not have been used to assist the Court in fashioning a plan of reapportionment.

The answers to these objections may be summarized as follows:

1. The "historical" boundaries of voting districts in Louisiana reflect a history of racial discrimination. Adherence to the historical boundaries alluded to by objectors has been the prime reason why only two negroes have been allowed to sit in the Louisiana Legislature in the last 75 years. Historical boundaries and historical concepts, even when embodied in the State Constitution, must give way to federally guaranteed constitutional rights. The court approved plan has violated historical ward boundaries only where absolutely necessary to bring the proposed plan into full compliance with federal law.

2. Single member districts have been used exclusively in the court approved plan because they better protect the constitutional rights of Louisiana citizens. They minimize dilution of voting strength of minority groups and they make for uniformity throughout the State. Single member districts provide more compactness of districts and they result in less deviation from the one man, one vote requirement than do multimember districts.

3. Jefferson Parish is simply not "short changed" in House representation. Their population entitles them to 9 2/3 representatives. The court approved plan actually gives them 10 plus members. Combining certain areas of Jefferson Parish with other parishes has been completely justified by

the necessity of complying with the one man, one vote rule. Where parts of Jefferson Parish are combined with other parishes, every consideration was given to population, economic and social interests of the areas, and accessibility of one part of the district to the other.

4. The use of the Special Master is authorized by Rule 53 of the Federal Rules of Civil Procedure. The Special Master did not have the final approval or disapproval of the plan. He submitted a plan with certain alternatives. This Court, after many long hours of study, made the final determination of the plan which it was to adopt as its own.

In conclusion, it is the opinion of this Court that the Reapportionment Plan for the Louisiana Legislature approved and adopted by this Court on August 24, 1971, meets all constitutional requirements. There is much evidence in the record of this case to support that plan, and there is no evidence of any consequence to justify substituting any of the proposed plans therefor. The question is not whether another plan equally as good can be drawn. The Court takes cognizance of the fact that there are many different ways in which the Legislature could be apportioned and still meet constitutional requirements. This Court simply concludes that the plan presented by the Special Master and approved by the Court does, in fact, meet all constitutional requirements. On the other hand, the

Court concludes that the proposed substitute plans do not, in this case, meet constitutional requirements. The Special Master, after lengthy hearings conducted over a four day period, made his findings of fact and based thereon he prepared a plan. It is well settled that the findings of fact of the Special Master are binding upon the Court unless found to be clearly erroneous. Locklin v. Day-Glo Color Corp., 429 F.2d 873 (CA Ill. - 1970); Leader Clothing Co. v. Fidelity and Casualty Co. of New York, 237 F.2d 7 (CA Kan. - 1956); Eastern Fireproofing Co. v. U. S. Gypsum Co., 50 F.R.D. 140 (D.C.-Mass. - 1970). There is no showing of any kind that the Master's findings of fact, upon which the court approved plan is based, was in any way erroneous. The ultimate adoption of the plan was made by the Court after concluding that, as a matter of law, the plan met all constitutional requirements. After these most recent hearings, this Court is more convinced than ever that the Reapportionment Plan for the Louisiana Legislature first approved by it on August 24, 1971, should once again be approved and adopted without change, and that its immediate implementation should be ordered.

Judgment will be entered accordingly and an order will be issued simultaneously therewith implementing said plan and providing for the necessary qualifying period for candidates who wish to seek election to the Louisiana Legislature in the upcoming elections.

Baton Rouge, Louisiana, September 10, 1971.

E. Gordon West

UNITED STATES DISTRICT JUDGE

APPENDIX B

U.S. COURT OF APPEALS
FILED
SEP 14 1971
EDWARD W. WADSWORTH
CLERK

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 71-2783

VICTOR BUSSIE ET AL.,

Plaintiffs-Appellees-Appellants,

vs:

JOHN J. McKEITHEN, Governor of the
State of Louisiana, et al.

Defendants-Appellants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

---

(September 1971)

Before WISDOM, COLEMAN, and SIMPSON, Circuit Judges.

BY THE COURT:-

This expedited appeal is from a judgment of the district court under our remand of Sept. 4, 1971 ordering the district court to conduct a hearing on the Master's proposed plan for reapportionment of the Louisiana legislature.

1. We hold that the district court correctly determined that the case was properly before him as a single judge.

2. We approve the dates, September 15 and 16, 1971, set by the district court for the qualification of candidates for the Louisiana legislature.

3. We affirm the judgment of the district court with the following modifications:

a) The boundaries of Senate districts 2, 3, 4, and 5 are modified so as to conform with the defendants-appellants' alternate plan for these districts.

(2)

b) The boundaries of Senate districts 14, 15, and 16 are modified so as to conform with the DeBlieux alternate plan for those districts.

c) For the purposes of the forthcoming election only, we approve the reapportionment of Jefferson Parish as set forth in the Master's plan and adopted by the district court. This approval is without prejudice to any challenge to the apportionment of Jefferson Parish for future elections.

IN THE

Supreme Court of the United States

OCTOBER TERM 1971

Supreme Court, U. S.
FILED
APR 15 1972
MICHAEL RODAK, JR., CLERK

No. 71-784

DOROTHY TAYLOR, CHARLES ELLOIE, ISAAC REYNOLDS and CELESTINE FRANKLIN, on behalf of themselves and other similarly situated.

Plaintiffs-Petitioners,

versus

JOHN J. McKEITHEN, Governor of the State of Louisiana, C.C. "TADDY" AYCOCK, Lieutenant Governor of the State of Louisiana, JOHN S. GARRETT, Speaker of the House of Representatives, JACK P.F. GREMILLION, Attorney General of the State of Louisiana, DOUGLAS FOWLER, State Custodian of Voting Machines for Louisiana, and THE ORLEANS DEMOCRATIC EXECUTIVE COMMITTEE.

Defendants-Respondents.

VICTOR BUSSIE, JOHN C. BRIGHT, A.P. "PAT" STODDARD, T. K. STIZLEIN and LOUIS BERRY CARROLL, G. MILLER, WALTER M. RUTZ, PERRIN RITTINER, BENJAMIN FORBES, SR., MRS LILLIE BRIDGES, EMMITT J. DOUGLAS, DR. D'ORSAY BRYANT, ARTHUR J. CHAPITAL, A.C. DUBRIEL, ROOSEVELT HILL, REV. HERMAN FARR and FLORENCE FLOYD.

Plaintiffs-Respondents.

RESPONSE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in modifying Senate Districts 2, 3, 4 and 5 of the special master's plan as adopted by the District Court in order to correct apparent constitutional deficiencies therein and remove racially gerrymandered districts.

2. Whether the decision of the Court of Appeals is still a controversy subject to review on writ of certiorari or is moot, since the elections have already been held in the districts as constituted by the Court of Appeals.

3. Whether this case presents any issues of special interest which justify a writ of certiorari to review the unanimous decision of the Court of Appeals, which decision adopted the special master's reapportionment plan as adopted by the District Court with the sole exception that seven Senate Districts were altered in the Court of Appeal decision, out of a total of 144 legislative districts. Petitioner's complaint here is limited to four of those districts.

STATEMENT OF THE CASE

After Louisiana Acts 106 and 108 of 1971, reapportioning the Louisiana State Legislature in light of the 1970 Census, were found unconstitutional, the District Court appointed a special master to draw a plan of reapportionment. The District Court, without conducting any hearing or receiving proposals of other plans of reapportionment, entered a judgment adopting the special master's plan. The Court of Appeals vacated the judgment of the District Court and remanded the case to the District Court, ordering a hearing on the master's proposed plan in accordance with Federal Rules of Civil Procedure 53(e)(2). The District Court held a perfunctory hearing, rejecting all alternative plans or proposed modifications of the master's plan, and again adopted the master's plan as proposed. The Court of Appeals, after a full hearing and review of various proposed plans and proposed modifications modified the reapportionment plan with respect to Senate Districts 2, 3, 4 and 5, among others. Petitioners apparently make no complaint of the other changes effected by the Court of Appeals decision. For a more complete statement of the case, including a discussion of the racially gerrymandered effect of the District Court's decision, as well as population data indicating beyond question that the modified plan is not facially discriminatory, see respondents' brief to the Fifth Circuit, made part hereof as an Appendix.

REASONS FOR DENYING WRITS OF CERTIORARI

1. THE COURT OF APPEALS PROPERLY MODIFIED THE FOUR SENATE DISTRICTS IN QUESTION SO AS TO ELIMINATE CONSTITUTIONAL DEFECTS IN THE MASTER'S PLAN BY REMOVING THEREFROM RACIALLY GERRYMANDERED DISTRICTS.

The Court of Appeals properly modified the District Court's plan with respect to Districts 2, 3, 4 and 5 to conform the plan to the constitutional requirements as set forth by this Court. Under the plan of reapportionment adopted by the District Court, Senate Districts 2, 3, 4 and 5 were created by artificial meandering lines that violated historical and traditional political subdivision boundaries and created "white districts" and "black districts". The plan resulted in impermissible racial gerrymandering. With total disregard for local subdivision boundaries, the District Court carved out racially segregated districts, creating a virtually solid black district and a virtually solid white district. See Appendix for black-white ratio statistics.

The boundaries of the City of New Orleans and the Parish of Orleans are co-existent and have been for nearly a century. In New Orleans (Orleans Parish) the ward has been the traditional historical boundary. Virtually since the founding of this old city, geographic electoral districts for public officials have always been either city wide, or where less extensive, based upon ward lines. The City ward has always occupied virtually the same status as the Parish (county) in other areas of the State. The ward in Orleans Parish is properly characterized as the historical boundary for established political subdivisions. The reapportionment plan for Senate Districts 2, 3, 4 and 5 as ordered by the District Court does unnecessary and unconstitutional violence to the established historical ward boundaries of the City of New Orleans.

In Bannister vs. Davis, 263 F. Supp. 202 (D.C. La. 1966), a three judge panel approved a reapportionment plan which was constructed almost entirely along ward boundary lines, with slight deviations to correct population imbalances. In the Bannister case, the Court pointed out that mathematical certainty is not a constitutional requirement, that each voting district need not have precisely the same number of individuals per elected representative, and that the decisions of this Court stress the principle that reapportionment plans not only may but should follow the boundaries of existing wards and parishes. Indeed, an analysis of the Bannister case and the decisions of this Court, both before and after Bannister, on this point indicate clearly that the only justification for deviating from established political boundaries, such as the ward lines of Orleans Parish, is to achieve population balance within justified deviations. In Bannister, the Court said:

> "Mathematical exactitude is not a constitutional requirement. Each voting district need not have precisely the same number of individuals per elected representative..."
>
> * * *
>
> "...a reapportionment plan may and should follow the boundaries of existing wards and parishes as long as it represents the good faith attempt to keep the number of persons per representative as close as possible to the ideal..." 263 F. Supp. at 206.

The use of parish or ward lines must not submerge population as a controlling factor. However, it is clear that where in a given area, as in the instance of the area of New Orleans in question, where each of two plans which produce population counts well within the deviations accepted under the reapportionment decisions, that plan which follows established political boundaries must be favored and that which disregards them must be rejected. In modifying the plan adopted by the District Court, the Court of Appeals substituted a plan which maintained ward boundary integrity within the permissible population deviations and rejected a plan which did violence to boundary integrity and which was no more desirable because the population deviations are substantially the same in each plan.

In the case of Abate vs. Mundt, 403 U.S. 182 (1971), this Court upheld a reapportionment plan for Rockland County, New York, even though the total deviation for population equality was 11.9 consent. The Court pointed out that mathematical precision is not a workable constitutional requirement, that deviations from population equality are justified if supported by a legitimate State consideration, and that a desire to preserve the integrity of political subdivisions justifies an apportionment plan which departs from numerical equality.

A comparison of the plan approved by the District Court with the plan as modified by the Court of Appeals demonstrates that the Court of Appeals' plan preserves the integrity of long established political subdivisions and historical political boundaries, while the District Court's plan does violence thereto. Furthermore, the plan as modified by the Court of Appeals includes logical, contiguous compact districts. The District Court's plan created "jigsaw" districts with as many as 24 sides. See Gomillion vs. Lightfoot, 364 U. S. 339 (1960). Had the Legislature attempted to impose upon the people of this State such "jigsaw" districts, there would have been justifiable criticism of "gerrymandering". The special master chose to disregard the concept of the integrity of political subdivisions, the maintenance of compactness and contiguity in legislative districts, and recognition of natural or historical boundary lines. The District Court adopted this approach:

> "And I, [Trial Court] don't care what the boundaries are, because I don't know where the boundaries are; I don't have any idea where the boundaries are; and I don't propose to concern myself with it as long as the areas involved have representation from those areas..." (See Transcript of Comments of Court within the record dated Monday, August 2, 1971 on pages 7 and 8.)

* * *

> "[a] Plan resulting from a computer determination if necessary in order to arrive at a plan most nearly consistent with the one man, one vote concept enunciated by the United States Supreme Court." (See District Court Order dated August 5, 1971)

By contrast to the District Court's plan, in the recent Mississippi reapportionment case of Connor vs. Johnson, 330 F. Supp. 506 (S.D. Miss 1971), a three-judge panel approved deviations of nearly ten percent, completely rejecting a suggesting that county lines should be crossed in order to achieve a more perfect numerical balance with the following observation:

> "We, therefore, adhere to political lines as the best, fairest and most effective method of delineating districts for the election of State Legislators..." 330 F.Supp. at 518

The districts created by the District Court plan virtually insured black representation in some districts through purposefully precluding that possibility in other districts. See Appendix for black-white ratio statistics. This creation of black districts and white districts by drawing zigzag lines is contrary to the principles set forth in Whitcomb vs. Chavis, 403 U. S. 124 (1971). In that case, residents of Marion and Lake Counties, Indiana, challenged State statutes establishing a multi-member district for the election of State Senators and Representatives. The challengers' primary contention was that the existence of the multi-member districts as created by the statute invideously diluted the vote of Negroes and poor persons living in the "ghetto area" of Marion County. This Court reaffirmed the principle that drafting a reapportionment plan in order to guarantee one racial group representation, whether white or black, is unconstitutional. Further, this Court pointed out that Federal Courts are not unlimited in their use of their judicial authority to broadly brush aside state apportionment policy without solid constitutional or equitable grounds for doing so. The portions of the opinion appearing at 91 S. Ct. 1871 et seq. are particularly appropriate to the instant case.

The District Court plan disregarded the mandate of this Court and of the United States Constitution that "districts should be drawn with an eye that is color blind". The Court of Appeals modified the District Court plan without regard to the color of the citizens living in the diverse areas of the City, while at the same time maintaining, wherever possible, historical ward boundaries and keeping within the permissible population deviances. As Justice Douglas pointed out in his dissenting opinion in Wright vs. Rockerfeller, 376 U. S. 62 (1964):

> "When racial or religious lines are drawn by the State, the multiracial, multireligious communities that our Constitution seeks to weld together as one become separatist; antagonisms that relate to race or to religion rather than to political issues are generated; communities seek not the best representative but the best racial or religious partisan, since that system is at war with the democratic ideal, it should find no footing here."

2. THE ISSUES DECIDED BY THE COURT OF APPEALS IS MOOT SINCE ELECTIONS HAVE ALREADY BEEN CONDUCTED IN THE DISTRICTS AS CONSTRUCTED BY THE COURT OF APPEALS.

The election of State Senators under the plan adopted by the Court of Appeals was held on February 8, 1972, the primaries having been conducted earlier. This case is therefore moot.

The petitioners in this writ seek post-election relief in requesting the redrawing of Districts 2, 3, 4 and 5 and the ordering of new elections for these four Senate seats. There is no longer an actual controversy before this Court, because the election is over. Post election relief should be denied when the case is moot since there is no actual controversy to be decided by the Court and this Court does not render advisory opinions. Hall vs. Beals, 396 U. S. 45 (1969); Golden vs. Zwicker, 394 U. S. 103 (1969); Mills vs. Green, 159 U. S. 651 (1895); Fair vs. Dekle, 376 F. 2d 377 (5th Cir. 1966); Bynum vs. Burns, 379 F. 2d 229 (8th Cir. 1967); Munoz vs. Amador, 340 F. 2d 590 (5th Cir. 1965); Fair vs. Adams, 233 F. Supp. 310 (N.D. Fla. 1964).

3. THIS CASE PRESENTS NO ISSUE OF SPECIAL INTEREST JUSTIFYING A WRIT OF CERTIORARI.

The Louisiana Legislature is comprised of 144 legislative districts. The Court of Appeals approved the special master's plan as previously approved by the District Court with respect to 137 of those districts and modifying only 7. This petition for certiorari involves only 4 of those 7 districts. Thus, this case does not involve issues of the significance of a typical legislative reapportionment case, but rather only a small segment of the Louisiana Legislature.

This case is void of any special, important or compelling reasons for conducting a review on writ of certiorari. This case contains none of the generally recognized criteria usually considered by this Court in deciding whether writs should be granted.

The decision of the Court of Appeals does not conflict with the decision of another Court of Appeals on the same matter. The Court of Appeals has not decided an important state or territorial question in a way in conflict with applicable state or territorial law. The Court of Appeals has not decided an important question of Federal law which has not been settled by this Court. The Court of Appeals has not decided a Federal question in any way in conflict with applicable decisions of this Court. The Court of Appeals has not departed from the accepted and usual court of judicial proceedings.

CONCLUSION

The Court of Appeals properly modified the plan of reapportionment for Senate Districts 2, 3, 4 and 5 as adopted by the District Court to carry out the principles of reapportionment as established by this Court. The Court of Appeals reapportioned Senate Districts 2, 3, 4 and 5 with a color blind eye that preserves the integrity of traditional and historical political subdivisions lines, maintains compact and contiguous legislative districts and is well within permissible population deviations, particularly when the minute deviations have such rational bases as those set forth above. Furthermore, since this case is now moot and presents no issues of special interest requiring review, Defendants-Respondents respectfully pray that the petition for certiorari be denied.

Respectfully submitted,

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CERTIFICATE

Undersigned counsel hereby certifies that a copy of the foregoing brief has been forwarded to opposing counsel of record, this 14th day of April, 1972.

Ignatz G. Kiefer

PENDIX

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
NO. -2968

APPEAL FROM U ED STATES DISTRICT COURT EASTERN DISTRIC OF LOUISIANA, BATON ROUGE DIVISION

VICTOR BUSSIE, ET AL VS. THE GOVERNOR OF SIANA, ET AL	CIVIL ACTION NO. 71-202
EMMITT J. DOUGLAS, ET AL VS. JOHN J. McKEITHEN, Individually and as Governor of Louisiana,et al	CIVIL ACTION NO. 71-206
DOROTHY TAYLOR, ET AL VS. JOHN J. McKEITHEN, Governor of Louisiana, et al	CIVIL ACTION NO. 71-234
CARROLL G. MILLER, ET AL VS. GOVERNOR OF LOUISIANA, ET AL	CIVIL ACTION NO. 71-235
VICTOR BUSSIE, ET ALS VS. THE GOVERNOR OF LOUISIANA, ET ALS	CIVIL ACTION NO. 71-259

BRIEF ON BEHALF OF APPELLANTS WITH RESPECT TO SENATE PLAN NEW ORLEANS AREA

(Where used in this portion of the brief, District numbers refer to the numbers used in the plan ordered by the District Court)

The boundaries of the City of New Orleans and the Parish of Orleans are co-existant and have been for nearly a century. In New Orleans (Orleans Parish) the ward has been the traditional historical political boundary. Virtually since the establishment of this old city, districts for public officials have always been either City-wide or, where less extensive, based upon ward lines. The City ward has always occupied virtually the same status as a Parish (County) in other areas of the State.(1)

Assessment districts are divided by ward lines, as are City councilmanic districts. The legislative districts, both House and Senate, have always been so constructed. Thus, clearly, the ward in this parish is properly characterized as a historical boundary and an established political division.

The Orleans Parish Senate part of the reapportionment plan approved by this Court in Bannister vs. Davis, (263 F. Supp.202, 209 (D.C. La. 1966) was constructed entirely along ward lines; in the House plan there were very few exceptions to the ward boundary and these were designed to correct population imbalances.

With respect to Districts 6, 7 and 8,

the Senate plan for the New Orleans area approved by the District Court respects ward lines, with very slight deviations to achieve population balance. However, in Districts 2, 3, 4 and 5, ward lines are virtually ignored, with no apparent justification. For example, portions of Ward 7 are spread through all three districts. Further, according to the United States census figures, the Ninth Ward has 136,820 population, which is more than 40,000 people necessary to constitute an ideal single member senatorial district comprising 93,415 people. Under the Senate plan ordered by the District Court, the Ninth Ward has been completely divided with one section of the Ninth Ward forming a senatorial district with small portions of Wards 7 and 8 and another senatorial district with a small portion of Ward 8.

An alternate plan proposed to this Honorable Court by appellants achieves substantial population balance in accordance with the United States Supreme Court decisions governing the principles of "one-man - one vote" following historical ward lines. The alternate plan (2) is as follows:

District	Parish Description	Population	Numerical Deviation	Percent Deviation
2	Orleans Ward 9- Less Precincts 9 through 29	88,374	-5,041	-5.4
3	Orleans Ward 8 Ward 9 - Precincts 9 through 29	87,907	-5,508	-5.9
4	Orleans Wards 6 and 7	89,155	-4,260	-4.56
5	Orleans Wards 1,2,3 4 and 5	97,705	+4,290	+4.59
6	Same as U. S. District Court			
7	Same as U. S. District Court			
8	Same as U. S. District Court			

It should be noted that with respect to three districts, the above plan is identical to that of the United States District Court. With respect to Districts 4 and 5, the numerical division is substantially the same as in the District Court's Plan which criss-crossed wards. Moreover, as to these districts, the above proposed plan follows established ward lines which have served as the basis for legislative districts for over a century.(3)

With respect to the proposed Senatorial Districts 2 and 3, it should be noted that the composition of each single member senatorial district did not require the crossing of census tracts or voting precincts. Yet, proposed Districts 2 and 3 fully preserve the historical political subdivision of Ward 8 in its entirety and substantially those of Ward 9. The established boundaries of Wards 8 and 9 have existed in Louisiana law for many decades.(4) Of paramount importance, all precincts of Ward 9, which are a part of Senatorial District 3, are immediately adjacent and contiguous with those of Ward 8 and Precincts 9 through 29 of Ward 9 are exactly within the census tract boundaries promulgated by the United States Bureau of Census. (5)

Proposed Districts 2 and 3 do have a somewhat higher numerical deviation than the plan proposed by the District Court. However, the testimony and documentary proof at the hearing before the District Court firmly establishes that the Ninth Ward of Orleans Parish is the fastest developing and growing area of the entire City of New Orleans. (6) The unofficial census returns show a total population for the Ninth Ward of 136,820 people. (7) Yet, it is beyond dispute that new homes and apartment houses are being constructed throughout the area and within a very short period of time, the population of the Ninth Ward will easily exceed 200,000 residents. The United States Supreme Court in the recent case of Kirkpatrick vs. Preisler, 394 U.S. 526, 22 La. Ed. 2d 519, 89 S.Ct. 1225, (1968), ruled on this point as follows:

> "...Situations may arise where substantial population shifts over such a period can be predicted. Where these shifts can be predicted with a high degree of accuracy, States that are redistricting may properly consider them. By this we mean to open no avenue for subterfuge. Findings as to population trends must be thoroughly documented..."

Clearly, the fractional deviation over the population deviation established by the District Court is acceptable in light of the numerous United States Supreme Court decisions approving reapportionment plans with deviations far in excess of those proposed in Districts 2 and 3. In the Bannister case, the opinion of the three-judge Court consisting of Judge Wisdom, Christenberry and West includes the following language pertinent hereto:

> "...In line with a number of cases, we adopt as a permissible standard 15 per cent deviation from the ideal."
>
> * * * * * *
>
> "Where evidence shows that the population of a district has increased disproportionately in relation to

> the rest of the state since the 1960 census, the legislature may permissibly err slightly to the side of overrepresentation to compensate for that district's additional growth..."

It is well established in the Federal jurisprudence on reapportionment that the integrity of political subdivisions or the recognition of natural or historical boundary lines within a State shall not be disturbed except where it is absolutely necessary to preserve the principle of "one-man - one-vote" representative districts. Consistently, the Courts have held that variations from a pure population standard are justified by such state policy considerations as [1] "the integrity of political subdivisions", [2] the maintenance of compactness in legislative districts or [3] the recognition of natural or historical boundary lines. (8) In the Bannister case the Court pointed out that mathematical exactitude is not a constitutional requirement, that each voting district need not have precisely the same number of individuals per elected representative, and that the United States Supreme Court decisions stress the principle that reapportionment plans not only may, but should follow the boundaries of existing wards and parishes. Indeed, an analysis of the Bannister case and the United States Supreme Court decisions both before and after it on this point indicate clearly that the only justification for deviating from established political boundaries, such as wards in New Orleans, is to achieve population balance within justified deviations.

It is respectfully submitted that the District Judge in the instant case ignored completely the following principles to which he subscribed in Bannister:

> "Mathematical exactitude is not a constitutional requirement. Each voting district need not have precisely the same number of individuals per elected representative..."
>
> * * * *
>
> "...A reapportionment plan may and should follow the boundaries of existing wards and parishes as long as it represents a good faith attempt to keep the number of persons per representative as close as possible to the ideal..."

Admittedly, the use of parish or ward lines must not submerge population as to the controlling factor. However, it is equally clear that where in a given area, as in this instance in the areas of New Orleans in question, each of two plans would produce population well within the deviations accepted in earlier decisions, that plan which follows established political boundaries must be accepted and that which disregards them must be rejected.

In the very recent case of Abate vs. Mundt, 401 U.S. ____, 91 S.Ct. 1904, 28 L. Ed 2d ______ (1971), the United States Supreme Court upheld a reapportionment plan for Rockland County, New York, even though the total deviation from population equality was 11.9%. The Court pointed out that mathematical precision is not a workable constitutional requirement, that deviations from population equality are justified if supported by legitimate State considerations, and that a desire to preserve the integrity of political subdivisions justifies an apportionment plan which departs from numerical equality.

> "It is well established that electoral apportionment must be based on the general principle of population equality and that this principle applies to state and local elections, Avery v. Midland County, 390 U.S. 474, 481, 88 S. Ct. 1114, 1118, 20 L. Ed. 2d 45 (1968). 'Mathematical exactness or precisions is hardly a workable constitutional requirement', Reynolds vs. Sims, 377 U.S. 533, 577, 84 S.Ct. 1362, 1389, 1390, 12 L. Ed. ¶d 506 (1964), but deviations from population equality must be justified by legitimate state considerations, Swann v. Adams 385 U.S. 440, 444, 87 S. Ct. 569, 572, 17 L.Ed. 2d 501 (1966). Because voting rights require highly sensitive safeguards, this Court has carefully scrutinized state interests offered to justify deviations from population equality.
>
> "In assessing the constitutionality of various apportionment plans, we have observed that viable local governments may need considerable flexibility in municipal arrangements if they are to meet changing

> societal needs, Sailors vs. Kent Board of Education, 387 U.S. 105, 110-111, 87 S.Ct. 1549, 1553-1554, 18 L. Ed. 2d 650 (1967), and that a desire to preserve the integrity of political subdivisions may justify an apportionment plan which departs from numerical equality. Reynolds vs. Sims, 377 U.S. 533, 578, 84 S. Ct. 1362, 1390, 12 L. Ed. 2d 506 (1964)." Abate vs. Mundt, supra.

Even a cursory comparison of the plan approved by the District Court with that submitted by appellants will demonstrate beyond any question that appellants' plan preserves the integrity of long established political subdivisions and historical political boundaries, while the plan accepted by the District Court does violence thereto. Furthermore, the alternate plan of appellants includes logical, contiguous districts. The Master's plan creates "jigsaw" districts with as many as twenty-four sides. Had the legislature attempted to impose upon the people of this State districts so shaped, there would have been no end to the criticism which would have resulted, and the criticism would have been justified.

In the case at hand, the Master chose to ignore those long standing principles of Federal Constitutional law established by the United States Supreme Court. Apparently relying upon the following observations by the Trial Court, the Master totally disregarded the concept of the integrity of political subdivisions, the maintenance of compactness and contiguity in legislative districts and the recognition of natural or historical boundary lines:

> "And I, [Trial Court] don't care what the boundaries are, because I don't know where they are; I don't have any idea where the boundaries are; and I don't propose to concern myself with it, as long as the areas involved have representation from those areas..." (See transcript of comments of Court within the record dated Monday, August 2, 1971 at pages 7 and 8)

* * * *

> "[A] plan resulting from a computer determination if necessary in order to arrive at a plan most hearly consistent with the one man, one vote concept innunciated by the United States Supreme Court." (Emphasis added. See District Court Order dated August 5, 1971)

By contrast to the District Court's plan, in the recent Mississippi reapportionment case of Connor vs. Johnson, 279 F. Supp. 699, a three-judge panel approved deviations of nearly 10%, completely rejecting a suggestion that county lines should be crossed in order to achieve a more perfect numerical balance with the following observation:

> "We, therefore, adhere to county lines as the best, fairest, and most effective method of delineating districts for the election of State legislators..."

ANALYSIS OF TESTIMONY AT DISTRICT COURT HEARING AND DISTRICT COURT'S OPINION

There are few, if any, disputed factual questions involved in this litigation. Thus, of necessity, a hearing concerning the Special Master's proposed plan would involve primarily submission of alternative plans and the establishment of relevant, virtually undisputed facts concerning the population and geography of the districts in question.

From these standpoints, the hearing in the District Court established all of the facts which were stated as such in appellants' prior brief to this Court, in appellants' objection and memorandum in support thereof filed at the hearing in the District Court, and in this brief.

Moreover, the hearing confirmed once again the District Judge's conviction, apparently reached when the Master's plan was first submitted to and approved by him before any party or interested person could even see it, that the Special Master's plan would be approved without any change whatsoever, no matter what may have been brought out at the hearing. With all due respect to the District Court, a fair and objective reading of the record leads to the inescapable conclusion that the hearing constituted in reality a defense by the District Judge of his Special Master's plan. See, for example, the following excerpts from the transcript:

THE COURT:

> This hearing, I want to tell you now will be expedited. So gentlemen, you may proceed in whatever

> manner you wish to proceed in; it is immaterial to me who wants to be heard how, when or where. It's immaterial to me; just go ahead and get it in the record. So you may proceed, gentlemen, any way you wish. (TR.9)

THE COURT:

> Oh, let me file one other thing in the record. This is a Western Union telegram from a Mr. Paul J. Hubbell, Jr., which says: "Consider my letter of August 14, 1971, to Mr. Ed Steimel and yourself as testimony in favor of single member districts." I would like this filed in the record of this case. (TR.10)

THE COURT:

> It is not a question, gentlemen, of whether or not a better plan could be devised; that simply is not the law. We are concerned with whether or not the plan that this Court has approved is a proper plan and was properly approved; and so that is what we are considering in this hearing; and that, of course, is what will go to the Court of Appeals. (TR. 134)

THE COURT:

> . . . I don't care to go into any other plans now. (TR. 135)

Significant facts brought out at the hearing include the following:

1. The total area included in appellants' proposed alternate Districts 2, 3, 4 and 5 is exactly the same as that in the Special Master's plan, so that the four alternate districts could be substituted for the Steimel districts without changing any other district whatsoever. (Tr. 31 and 32).

2. Each of the districts in appellants' plan includes a substantial black population; one, District 4, has a population which is approximately 60% Negro. (Tr. 36, et seq.)

3. Despite the heavy concentration of the Negro population in all of these districts, and particularly Wards 6 and 7, District 4, never was any attempt made, either in the course of the proceedings before the legislative and other committees appointed to draw reapportionment plans or in the legislature itself, to construct these districts along racial lines or, specifically, to include additional white population in District 4.

4. The state policy of including Wards 6 and 7 as a single-member Senate District has been established for over fifty years. Every proposal by every committee and by the legislature itself retained that district as such. (Tr. 40 and 97)

5. The effect of the Special Master's proposal is to create by artificial meandering lines "white districts" and "black districts", to the detriment of all citizens of this city. That portion of the Seventh Ward which is retained in the Special

Master's "white" District No. 5 includes practically all of the blacks remaining in this "white" district, approximately 20% of the total district. The effect of drawing racially segregated district lines will be to seriously impede a peaceful integration process taking effect in this area. (Tr. 92)

6. The Special Master's plan is virtually identical to one submitted prior to the 1966 reapportionment by the White Citizens Council, which was designed to create a virtually solid black district and a virtually solid white one, with a resultant dilution of the effectiveness of the Negro vote. (Tr. 93 and 94)

7. There is a definite trend towards an increase in black population and voter registration as compared to the white population and registration in the entire area included within the four disputed Senate Districts. (Tr. 95)

8. The Ninth Ward of the city of New Orleans is the fastest growing area of the city. (Tr. 101, et seq., and affidavits of various city officials)

9. While only two Negro legislators have been elected since Reconstruction, both of them have been from Orleans Parish, none from the rest of the state. Furthermore, two judges and a School Board member have recently been elected in New Orleans on a city-wide basis, without the necessity for the creation of "black districts" for judges or School Board members. (Tr. 108 and 109)

IN VIEW OF THE FOREGOING FACTS, IT IS ALMOST INCONCEIVABLE THAT ANYONE COULD CONCLUDE THAT THE DISTRICTS PROPOSED BY APPELLANTS ARE CONSTRUCTED IN ORDER TO ACCOMPLISH AN "INTENTIONAL DILUTION OF VOTES". (Tr. 56) As a matter of fact, appellants urge with the utmost sincerity, with the interest only in mind of the people of New Orleans, and based upon counsels' intimate knowledge of the people of this area which comprises over one-half of the city, that the effect of Mr. Steimel's plan, if allowed to stand, will be to polarize the white and black races to the serious detriment of the city. In a "Meet The Press" interview of the National Governors' Conference this past Sunday, one of the nation's most liberal governors condemned governmental action tending towards the creation of separate white and black districts for any purpose. In his words:- "If that ever happens on a large scale in this country, then Heaven help the United States of America".

After offering Mr. Steimel to the litigants as a witness, the Trial Judge remarked that if he were not called, "his plan and his explanation of the plan as filed in the record will simply speak for themselves". (Tr. 131) Appellants saw nothing to be gained other than the consumption of time by the examination of Mr. Steimel as a witness. As previously stated, there are no real disputes as to factual issues, and Mr. Steimel's motives are not an issue. If his "explanation of the plan" as it relates to the four Senate Districts in question is allowed to speak for itself, as suggested by the District Court, the record is indeed mute. Mr. Steimel's report makes no explanation for his action in disregarding established ward lines, cutting across historical subdivisions, and producing districts which, by the District Judge's own admission, have a "many-sided perimeter". (District Judge's Opinion, Page 13)

On several occasions during the hearing and in his written opinion, the District Judge stresses that, in his opinion, the only question before him was whether the Steimel plan was "a proper plan". He repeatedly pointed out that he was not interested in whether a better plan could be devised. It is respectfully submitted that no reapportionment case to date adopts that view. The Court's duty is to adopt the best plan submitted to it, whether by the Special Master or anyone else, including second-class citizens such as incumbent legislators. For the Court to do otherwise is to impart to the Special Master's plan some special status. Obviously, this case does not involve a typical situation in which a matter is referred to a Master, involving complex factual issues. There are virtually no factual issues. When presented with an alternate plan such as appellants', which is well within the limits of the one-man, one-vote principle, but which much better meets every other standard enunciated by the Appellate Courts, it is respectfully submitted that the Court should substitute the alternate plan for that part of the Master's plan, rather than to take the view that the Master's plan is inviolate unless demonstrated to be unconstitutional.

As previously stated, the Master's

report gives no explanation for the creation of the four Senate Districts in question, deviating entirely from prior state policy, disregarding political subdivisions and historical boundaries, and creating "jigsaw" areas. In his written opinion, the District Judge appears to offer two explanations:-

1.

Steimel's plan pits incumbents against each other in each of two districts and creates two new districts without incumbents. For some reason, unkown to appellants and certainly unsupported by any decision to date, this seems to the District Court to be desirable. Obviously, the incumbents in these districts achieved that status by the election process in established political subdivisions, under a legislative reapportionment plan adopted by the Louisiana Legislature and approved by this Court in the Bannister case. The only plan which could place these incumbents thereafter in the same district would be one which deviates from the established state policy and from historical political boundaries. If this were necessary in order to comply with the one-man, one-vote principle, appellants would certainly make no objection. It should be noted that the 1966 reapportionment plan placed three then incumbents in a two-member district, and that the present proposed plan reduces the Orleans representation in the Senate from eight to seven, with the accompanying loss of one incumbent. Since these changes were necessary to follow the one-man, one-vote principle, appellants joined in making them, rather than objecting thereto. However, population considerations do not require the destruction of established political boundaries in this instance. Certainly, their destruction is not warranted simply to accomplish the elimination of one or more incumbents. Every prior reapportionment decision would condemn that result.

11.

The Trial Court concedes that the proposed changes suggested by appellants in the four Senate Districts "would result in districts contained within established ward lines whereas the Court-approved plan cuts across ward lines in some instances". (Opinion Pages 9 and 10) The District Court further conceded that the alternate plan "probably would meet the one-man, one-vote standard, even though the deviations would be slightly higher than under the Court-approved plan". (Opinion, Page 11) The only other explanation offered by the Court to justify the deviation from established reapportionment principles inherent in the Steimel plan involves racial considerations. The judge concludes erroneously that it is the adherence to established ward boundaries which has been the reason why only two Negro legislators have been elected in Louisiana. With all due respect, this is simply not a correct conclusion. As a matter of fact, as has been pointed out already, both of these legislators have come from New Orleans, and several important city-wide positions, including two District Judgeships and a School Board position, are presently filled by Negroes who have been elected city-wide, not from artificially constructed "black districts".

The basic fallacy in the District

Court's conclusions as to these four districts is the essentially racist premise that white voters vote only for white candidates and black voters for blacks. As indicated above,the facts do not support this premise. The fact is that a Negro candidate has a fair opportunity to be elected now in any of appellants' four proposed districts. Furthermore, the record demonstrates that all the districts proposed by appellants will experience a significant increase in black population in the future. Negroes are spread throughout the four districts proposed by appellants, not because of the way these districts are drawn but because, unlike many other cities, the Negro population is spread throughout every political subdivision of the city, and housing in this city is, to a large extent, racially integrated. These are desirable situations, to be encouraged. Application of the District Court's theory would, it is submitted, cause a serious regression in racial relations in this City. As a result of the very substantial Negro population in each of appellants' proposed four districts, the Negro voice in government is enhanced, not diluted, as it would be under the Steimel plan.

The District Court, in its opinion, seems to stress that appellants did not question Mr. Steimel "as to the rationale behind the Court-approved plan". Obviously the only rationale, as disclosed by the judge's opinion, was to segregate white and black voters, a rationale condemned by the United States Supreme Court and by the long-established policy of this nation. Finally,the Court discussed at some length the advantages of single-member districts, since appellants also propose single-member districts, this is no issue as to these four Senate Districts.

POPULATION IS THE CONTROLLING FACTOR; VOTER REGISTRATION IS IMMATERIAL

The District Court, in the instant case, considered voter registration figures admitted into evidence over objection, contained within an article appearing in the New Orleans States-Item on August 25, 1971. The reasons for judgment submitted by the District Court in support of its order are thus based upon unverified information appearing in the said article. It is respectfully submitted that there is no competent evidence whatsoever within the record that substantiates the voter registration composition of the Senatorial plan for New Orleans ordered by the District Court. Indeed, voter registration is completely unrelated to the issue at hand.

All reapportionment cases decided by the Federal Courts have consistently held that the population figures compiled by the United States Bureau of Census are controlling and that voter registration figures should not be considered. In the hallmark Bannister case, the Court rules as follows:

> "Apportionment in Louisiana should not be based on the number of registered voters or the number of votes cast . . . Administration convenience in Louisiana's traditional use of total population for apportioning the House. . strongly suggest that the legislature employed total populatation as the basis for reapportionment of both the House and Senate." Bannister vs. Davis, supra at page 208.

See also Kirkpatrick vs. Preisler, 394 U.S. 526, 534-535; 22 La. Ed. 2d 519, 527.

A reapportionment plan for the City of Baltimore, which was based on voter registration figures, was invalidated by a three-judge panel in the case of Ellis vs. Mayor and City Council of Baltimore, 234 F. Supp. 945 (1964). The Court in reviewing the United States Supreme Court decision of Reynolds vs. Sims, 377 U. S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964) observed as follows concerning the use of voter registration figures:

> ". . . defendants contend that the concept for 'one person, one vote' implicitly means that the validity of apportionment is related to voters and not constituents. Reference is made to isolated phrases throughout Reynolds vs. Sims, supra, and companion cases, where the Supreme Court discussed statistics relating to registered voters and referred to 'voters' sometimes even interchangably with 'population' as lending support to the asserted construction of 'one person one vote'. Nevertheless, a careful reading of Reynolds vs. Sims, and particularly its analysis of the foundation for the 'one person, one vote' concept, makes clear that the basic constitutional protection is one of equal representation by population and not equal representation by registered voters."
> (Emphasis added)

WHITCOMB VS. CHAVIS INVALIDATES DISTRICT COURT'S PLAN

The reasoning of the District Court in attempting to justify the destruction of established ward boundaries on the basis of racial considerations is in obvious conflict with the controlling case of Whitcomb vs. Chavis, 401 U. S. _____, 91 S. Ct. 1858, 28 L. Ed. 2d (1971) decided by the United States Supreme Court on June 7, 1971. The facts in the Chavis case are very similar to those involved in the instant litigation. In Chavis, suit was filed in the District Court by residents of Marion and Lake Counties, Indiana challenging state statutes establishing a multi-member district for the election of Senators and Representatives. The primary contention was that the existing statute invidiously diluted the votes of negroes and poor persons living in the "Ghetto area" of Marion County. A three-judge Court was empanelled and after extensive hearings the Court invalidated the Indiana statutes on the basis that they operated to minimize and cancel out the voting strength of a black minority group inhabiting a ghetto area in Indianapolis.

The three-judge Court proceeded to establish a single member district within the Township of Indianapolis, comprising 28 contiguous census tracts and parts of four others. The Court ordered a single member district consisting of 97,000 negroes and 35,000 whites. As in the instant case, the District Court in Chavis states that county lines had been crossed specifically to create a single member district wherein blacks would be elected to the legislature to give "recognition to the cognizable racial minority group whose grievance led (sic) to this litigation". Chavis vs. Whitcomb, 307 F. Supp. 1362, 1365-66 (1969).

The United States Supreme Court reviewed the District Court's determination in Chavis and firmly ruled that this type of approach, drafting a reapportionment plan in order to guarantee one racial group representation was completely invalid. Further, the Court observed that the District Court admittedly was sitting as an "equity court, but they were not unlimited in using their judicial authority by broadly brushing aside State apportionment policy without solid constitutional or equitable grounds for doing so".

> "Rather than squarely finding unacceptable discrimination against outstate voters in favor of Marion County voters, the trial court struck down Marion County's multi-member district because it found the scheme worked invidiously against a specific segment of the county's voters as compared

with others. The court identified an area of the city as a ghetto, found it predominatly inhabited by poor negroes with distinctive substantive law interest and thought this group unconstitutionally underrepresented because the proportion of legislators with residences in the ghetto elected from 1960 to 1968 was less than the ghetto's proportion of the population, less than the proportion of legislators elected from Washington Township, less populous district, and less than the ghetto would likely have elected had the county consisted of single-member districts. We find major deficiencies in this approach."

* * * * * * *

". . . The mere fact that one interest group of another concerned with the outcome of Marion County elections have found themselves outvoted and without legislative seats of its own provides no basis for involving constitutional remedies where, as here, there is no indication that this segment of the population is being denied access to the political system.

* * * * * * *

> "The District Court's holding, although on the facts of this case limited to guaranteeing one racial group representation, is not easily contained. It is expressive of the more general proposition that any group with distinctive interest must be represented in legislative halls if it is numerous enough to command at least one seat and represents a majority living in an area sufficiently compact to constitute a single-member district. This approach would make it difficult to reject claims of Democrats, Republicans, or members of any political organization in Marion County, who live in what would be safe districts in a single member district system but who in one year or another, or year after year, are submerged in a one-sided multi-member district vote. There are also union oriented workers, the university community, religious or ethnic groups occupying identifiable areas of our heterogeneous cities and urban areas . . ."

* * * *

It is respectfully submitted that the District Court in the instant case disregarded the mandate of the United States Supreme Court in Chavis ". . . districts should be drawn with an eye that is color blind", Ibid, p. 1866.

The plan approved by the District Court completely destroys ward boundaries in a manner similar to that which the District Court attempted in the Chavis case. The proposed Senate plan for the City of New Orleans does not violate the ward boundaries and does not in any manner "operate to minimize or cancel out the voting strength of the black population". Whitcomb vs. Chavis, 91 S. Ct. 1858, 1868-69 and cases cited therein. This is clearly illustrated by the following breakdown of the percentages of the black and white residents of the proposed new districts (See Tr. 74 et seq):

DISTRICT NUMBER	APPROXIMATE POPULATION WHITE	BLACK
2	52 %	48 %
3	56 %	44 %
4	40 %	60 %
5	62 %	38 %

(District 6 in the District Court plan also has a majority black population).

The District Court, while conceding that the proposed Senate Plan for the City of New Orleans is constitutional in that it meets the one man one vote standard without crossing ward boundaries, concludes that it operates to diversity the negro voting population throughout the districts and thus significantly dilutes their vote. (See reasons for Judgment, page 11). It is submitted that it cannot be seriously contended that the proposed new senatorial districts dilute the voting strength of Negroes in view of the foregoing percentages of Negro residents in each of the five proposed districts.

The City of New Orleans stands out as a model to the rest of the nation on race relations. There have been no riots or frictions between the black and white residents of the City of New Orleans as has occurred in numerous parts of the country. The plan approved for the senatorial districts in the City of New Orleans achieved nothing more than the complete polarization of whites in their respective districts and blacks into theirs in complete violation of the United States Supreme Court mandate in the Chavis case.

Justice Douglas in his dissenting opinion in the case of Wright vs. Rockerfeller, 376 U. S. 62, 84 S. Ct. 603 (1964) recognized the racial and political danger to a community created by a proposal such as the Steimel plan:

> "Racial electoral registers, like religious ones, have no place in a society that honors the Lincoln tradition - "of the people, by the people, for the people." Here the individual is important, not his race, his creed, or his color. The principle of equality is at war with the notion that District A must be represented by a Negro, as it is with the notion that District B must be represented by a Caucasian, District C by a Jew, District D by a Catholic, and so on. Cf. Gray vs. Sanders, 372 U. S. 368, 379, 83 S. Ct. 801, 807-808, 9 L. Ed 2d 821. The racial electoral register system weights votes along one racial line more heavily than it does other votes. That system, by whatever name it is called, is a divisive force in a community, emphasizing differences between candidates and voters that are irrelevant in the constitutional sense. Of course race, like religion, plays an important role in the choices which individual voters make from among various candidates. But government has no business designing electoral districts along racial or

religious lines..."

* * * *

> ". . When racial or religious lines are drawn by the State, the multiracial,multireligious communities that our Constitution seeks to weld together as one become separatist; antagonisms that relate to race or to religion rather than to political issues are generated; communities seek not the best representative but the best racial or religious partisan. Since that system is at war with the democratic ideal, it should find no footing here.
>
> "Separate but equal" and "separate but better off" have no more place in voting districts than they have in schools, parks, railroad terminals, or any other facility serving the public."

* * * *

The reasoning of Justice Douglas is applicable to the instant case. To allow the District Court plan for the Senatorial District of New Orleans to stand would, as Justice Douglas warned, cause the black and white community to become separatists to pit one race against the other. Antagonisms would in fact grow as a result of the proposed District Court plan, and the good will and cooperation which has existed in the New Orleans community for many years would be seriously affected.

CONCLUSION

The meandering lines of the District Court - Special Master Plan crossing repeatedly political subdivision lines long established in this State's Constitution, indicates that the author of the plan obviously misunderstood the Equal Protection Clause of the United States Constitution. The Legislature and the people through their constitution are the policy makers in our democratic system, and a Court errs by intruding upon or disregarding state policy any more than is necessary in correcting inequities. The District Court - Special Master Plan seriously and unnecessarily disregarded long established apportionment policies for this State. The requirements of the Fourteenth Amendment could be simply and more equitably satisfied by more closely adhering to established political subdivision boundaries and state policy.

Appellants' proposed Senate Plan for Orleans Parish satisfies these objectives. It should be noted that the changes proposed by appellants in the New Orleans Senate Plan can be made without having any effect whatsoever upon the rest of the Senate plan approved by the District Court.

Respectfully submitted,

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CERTIFICATE

Undersigned counsel hereby certifies that a copy of the foregoing brief has been hand delivered to opposing counsel of record, this 14th day of September, 1971.

s/I. G. Kiefer

FOOTNOTES

(1) The following examples are pertinent:

(a) In each parish except Orleans, one assessor is elected from the Parish. In Orleans Parish, an assessor is elected from each of the seven municipal districts. These districts are based on ward boundaries. La. Const. Art. XIV §§ 9 and 20.

(b) Until recently, U. S. Congressional Districts were apportioned on a ward basis in Orleans Parish and on a parish basis for all other parishes. (See Act 160 of 1912 and Act 355 of 1966) Basically, this pattern is still followed. (See La. R. S. 18:1431.)

(c) The membership of the State Central Committee of each of the various political parties is determined on a parish basis for all parishes except Orleans. In Orleans Parish, membership is twenty members from the representative districts therein. The representative districts generally follow ward boundaries. See La. R.S. 18:355 (1).

(d) Traditionally, Legislative Districts have been constructed on a ward basis in Orleans Parish and on a parish basis in other parishes. See R. S. 24:35 and 35.1; Bannister vs. Davis 263 F. Supp 202 (1966) upholding the constitutionality of Acts 3 and 4 of the 1966 Extra Session of the Legislature; Act 2 of the 1st Extra Session of 1963; Act 297 of 1960; Act 505 of 1954; La. Const. Act III, §2, 3, 4 and 5 and constitutional provisions cited in footnote 5.

(2) Thus, the contrast between the Special Master approved plan and the one which basically follows ward lines is graphically illustrated in the exhibits attached hereto. Particularly with respect to Districts 2, 3, 4 and 5, the Master plan follows a much meandering line. The boundaries of the proposed plan by defendants herein described are almost entirely straight lines. For example, the Master's proposed District 4 is a figure having 21 sides. Proposed District 5 has 24 sides. None of the defendants proposed districts exceed six (6) sides.

(3) See La. Const. of 1921, Art. III, §4; La. Const. of 1913, Arts. 19 and 20; La. Const. of 1898 Art. 20; La. Const. of 1879 Art. 18.

(4) See Footnote 1(d) and 3.

(5) See Exhibit #1 (Map and supporting documents)

(6) See affidavit of Harold Cook, Executive Vice-President of New Orleans East, Inc. with supporting documents. (Exhibit #2)

(b) See affidavit of Frank E. Robin, Department of Permits and Safety, Chief Building Inspector, City of New Orleans. (Exhibit #3)

(c) See Affidavit of Councilman Philip C. Ciaccio. (Exhibit #4)

(d) See affidavit of Louis E. Nicklaus, Chief Deputy Registrar of Voters for the Parish of Orleans, with supporting documents. (Exhibit #5) Significantly, it should be noted that from March 31, 1970, the concluding date of the 1970 census, through August 3, 1971, the number of registered voters increased from 44,380 to 46,143 or a total increase of 1,763, or approximately 4%. While an increase in voter registration does not of itself prove a comparable population increase, it is certainly a strong indication thereof. Correspondingly, a 4% increase in population since the United States Census figures were compiled would place these districts well within even the District Court's noun.

(7) See Footnote 5.

(8) Swann vs. Adams, 385 U. S. 440.

Reynolds vs. Sims, 377 U. S. 533.

Roman vs. Sincock, 377 U. S. 695.

TAYLOR ET AL *v.* McKEITHEN, GOVERNOR OF LOUISIANA, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 71-784. Decided June 12, 1972

The District Court in this litigation involving legislative reapportionment, after extensive hearings, approved a plan that departed from historical boundaries as necessary to avoid dilution of racial minority voting strength. The Court of Appeals, without opinion, reversed, adopting Louisiana's plan retaining those boundaries. *Held:* Absent an explication of the reasons for its summary reversal of the District Court, the Court of Appeals' judgment is vacated and the case remanded.

Certiorari granted; vacated and remanded.

PER CURIAM.

The 1970 self-reapportionment of the Louisiana Legislature was challenged in this lawsuit on the dual grounds that it offended both the one-man, one-vote principle and the prohibition against voting arrangements designed to dilute the voting strength of racial minorities. After the United States Attorney General interposed an objection to the election law change under § 5 of the Voting Rights Act of 1965, 79 Stat. 439, 42 U. S. C. § 1973c, the District Court appointed a Special Master to prepare a court-imposed plan. The Master was verbally instructed to hold hearings and in devising a proposal to maintain the integrity of political subdivisions and to observe natural or historical boundaries "as nearly as possible." He was also instructed that "[n]o consideration whatsoever was to be given to the location of the residence of either incumbents in office or of announced or prospective candidates." Opinion of Judge West, Civil Action 71-234, Aug. 24, 1971.

The Special Master held four days of hearings, during which over 100 persons were heard. Proposed plans were received by him. No one was denied a hearing. He then submitted his recommendation to the District Court and after a hearing it was adopted by the court.

This dispute involves only four state senate seats affected by the reapportionment. At the hearing held by the District Judge on the Master's proposal, the State Attorney General presented a counterplan which differed from the Master's only with respect to four senatorial districts in the New Orleans area. Although the judge found that both plans satisfied the one-man-one-vote requirement, he found that the two schemes differed in their racial composition of the four districts, as is set out in greater detail in the margin.[1] Under the State Attorney General's scheme, four "safe" white districts were proposed whereas the Master's design would have created two districts of slight majorities of black voters. Also, under the counterplan each incumbent would continue to reside in his "own" district whereas under the Master's proposal the residences of the four incumbents would fall evenly between the two districts to be composed primarily of white voters, ensuring defeat for two of the four incumbents.

At the hearing the State Attorney General contended that the court's plan would make hash of the traditional ward-and-precinct lines. The District Court acknowledged that there would be some departure from the historical patterns but concluded that the " 'historical'

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[1] According to the District Judge's opinion, the percentages of black registered voters in each of the four districts under each of the competing plans would be:

	Master's Plan	*Attorney General's Plan*
District 2	51%	37.6%
District 3	18%	25.7%
District 4	58%	44.3%
District 5	20%	24.0%

boundaries of voting districts in Louisiana reflect[ed] a history of racial discrimination. Adherence to the historical boundaries alluded to by objectors [had] been the prime reason why only two negroes [had] been allowed to sit in the Louisiana Legislature in the last 75 years." 333 F. Supp. 452, 462. The court found that the alternative proposal would "operate to diversify the negro voting population throughout the four districts and thus significantly dilute their vote" and would practically eliminate "the possibility of a negro being elected from any of the four districts," while the court-approved plan would at least give blacks "a fair chance in two out of the four districts. . . ." *Id.*, at 457. The court-approved plan sought "to protect the rights of the people while the primary purpose of the Senators' plan appear[ed] to be the protection of incumbent office holders." *Id.*, at 458. Accordingly, as mentioned, the District Court adopted the Master's recommendation.

Despite the District Court's findings, however, the Court of Appeals reversed without opinion and adopted the Attorney General's alternative division of New Orleans. The petitioners are the original plaintiffs and they now seek review of this summary reversal.

An examination of the record in this case suggests that the Court of Appeals may have believed that benign districting by federal judges is itself unconstitutional gerrymandering even where (a) it is employed to overcome the residual effects of past state dilution of Negro voting strength and (b) the only alternative is to leave intact the traditional "safe" white districts.[2] If that were in fact the reasoning of the lower court, then this petition would present an important federal question of the extent to which the broad equitable powers of a federal court, *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U. S. 1, 15, are limited by the colorblind concept of *Gomillion* v. *Lightfoot*, 364 U. S. 339, and *Wright* v. *Rockefeller*, 376 U. S. 52, 57, 67 (DOUGLAS, J., dissenting).[3] In reapportionment cases, as JUSTICE STEWART has observed, "the federal courts are often going to be faced with hard remedial problems" in minimizing friction between their remedies and legitimate state policies. *Sixty-Seventh Minnesota State Senate* v. *Beens*, 406 U. S. 187, 204 (dissenting opinion).

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[2] It is possible, but unlikely, that the Court of Appeals believed that benign districting, although permissible, was achievable here with less violence to the parish's historical district lines. But had that been its view presumably the Court would have remanded for the construction of a less drastic alternative rather than simply directing the adoption of the Attorney General's counterplan.

Because this record does not fully inform us of the precise nature of the litigation and because we have not had the benefit of the insight of the Court of Appeals, we grant the petition for writ of certiorari, vacate the judgment below, and remand the case to the Court of Appeals for proceedings in conformity with this opinion.[4]

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[3] Although similar in some respects, this case is not controlled by *Whitcomb* v. *Chavis*, 403 U. S. 124. To be sure, in both cases the District Courts were writing on clean slates in the sense that they were fashioning court-imposed reapportionment plans. And, in each case the equitable remedy of the court conflicted with a state policy. (There the state policy favored multi-member districts whereas here the policy favors maintenance of traditional boundaries.) The important difference, however, is that in *Whitcomb* it was conceded that the State's preference for multi-member districts was not rooted in racial discrimination, 403 U. S., at 149. Here, however, there has been no such concession and, indeed, the District Court found a long "history" of bias and franchise dilution in the State's traditional drawing of district lines. Cf. *id.*, at 155.

[4] We, of course, agree that the courts of appeals should have wide latitude in their decisions of whether or how to write opinions. That is especially true with respect to summary affirmances. See Rule 21, Court of Appeals for the Fifth Circuit. But here the lower court summarily reversed without any opinion on a point that had been considered at length by the District Judge. Under the special

MR. JUSTICE BLACKMUN concurs in the Court's judgment.

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and MR. JUSTICE POWELL join, dissenting.

The short recitation of specific facts in the Court's opinion makes clear that the issues in this case, as viewed by both petitioners and respondents, are well developed in the record. The federal questions adverted to by the Court in its opinion are undoubtedly important ones. They are either presented by the proceedings below on this record, or they are not; this Court, in exercising its certiorari jurisdiction, may wish to consider such problems as are presented in this case at this time, or it may not. While an opinion from the Court of Appeals fully explaining the reason for its reversal of the District Court would undoubtedly be of assistance to our exercise of certiorari jurisdiction here, it is by no means essential.[1] I do not believe that the Court's vacation of the judgment below with a virtually express directive to the Court of Appeals that it write an opinion is an appropriate exercise of this Court's authority.

The courts of appeals are statutory courts, having the power to prescribe rules for the conduct of their own business so long as those rules are consistent with applicable law and rules of practice and procedure prescribed by this Court, 28 U. S. C. § 2071. No existing statute or rule of procedure prohibits the Fifth Circuit from issuing a short opinion and order, as it has done here, or from deciding cases without any opinion at all. Cf. Rule 21, Court of Appeals for the Fifth Circuit. The courts of

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circumstances of this case, we are loath to impute to the Court of Appeals reasoning that would raise a substantial federal question when it is plausible that its actual ground of decision was of more limited importance.

[1] See, *e. g.*, *Lego* v. *Twomey*, 404 U. S. 477, 482 n. 6 (1972).

appeals, and particularly the Fifth Circuit, which has experienced the heaviest caseload of all the circuits, need the maximum possible latitude to deal with the "flood tide" of appeals that the "ever growing explosive increase" of federal judicial business has produced. See *Isbell Enterprises, Inc.* v. *Citizens Casualty Co.*, 431 F. 2d 409 (CA5 1970); *NLRB* v. *Amalgamated Clothing Workers,* 430 F. 2d 966 (CA5 1970).[2]

If there are important federal questions presented in this record, this Court should address itself to them. Instead of doing that, it calls upon the Fifth Circuit to write an *amicus curiae* opinion to aid us. I think decisions as to whether opinions should accompany judgments of the courts of appeals, and the desirable length and content of those opinions are matters best left to the judges of the courts of appeals. I therefore dissent from the order of vacation and remand.

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[2] In fiscal year 1971, 2,316 new matters were docketed in the Fifth Circuit, 380 more than in any of the other circuits. This represented a 120% increase in a 10-year period, although the number of circuit judges was increased by only 60%. Annual Report of the Director of the Administrative Office of the United States Courts 106 (1971). The increase in the business of the courts of appeals has been almost exponential. In 1961 the Fifth Circuit carried over only 278 cases that were undisposed of. By 1970 there were 1,181 cases put over to the succeeding year. *NLRB* v. *Amalgamated Clothing Workers,* 430 F. 2d 966, 968 n. 4 (CA5 1970).

END OF CASE